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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MATTHEW POWERS,
Plaintiff,

vs.

ANDREW SAUL,
Commissioner of Social Security,
Defendant.

Case No.: 2:20-cv-01399-BNW

**UNOPPOSED MOTION FOR EXTENSION OF
TIME TO FILE CERTIFIED
ADMINISTRATIVE RECORD AND ANSWER;
DECLARATIONS OF JEBBY RASPUTNIS AND
CHRISTIANNE VOEGELE**

(SECOND REQUEST)

1 Defendant, Andrew Saul, Commissioner of Social Security (the “Commissioner”), by and through
 2 his undersigned attorneys, hereby moves for a sixty-day extension of time to file the Certified
 3 Administrative Record (CAR) and answer to Plaintiff’s Complaint. The CAR and answer to Plaintiff’s
 4 Complaint are due to be filed by December 18, 2020. This is the Commissioner’s second request for an
 5 extension. The following provides the Court with an updated status of the agency’s ability to prepare
 6 CARs, including an updated declaration from Jebby Rasputnis.

7 In light of the global COVID-19 pandemic, the Social Security Administration (“SSA” or the
 8 “Agency”) has taken the unprecedented step of suspending in-office services to the public:
 9 <https://www.ssa.gov/coronavirus/>. The Agency is focusing on providing the most critical services by
 10 mail, phone and online to those most in need. SSA is also taking additional steps to protect its employees
 11 and help stop the spread of COVID-19, maximizing social distancing, including significantly limiting
 12 employee access to SSA facilities for health and safety only and has moved toward a temporary virtual
 13 work environment. Electronic processes allow some of SSA’s most critical work to continue with
 14 minimal interruption; other workloads have been suspended until the health crisis abates or the Agency is
 15 able to create new electronic business processes.

16 For purposes of this particular case, the public health emergency pandemic has significantly
 17 impacted operations in the Social Security Administration’s Office of Appellate Operations (OAO) in
 18 Falls Church, Virginia. That office is responsible for physically producing the administrative record that
 19 is required to adjudicate the case under Sections 205(g) and (h) of the Social Security Act, 42 U.S.C.
 20 § 405(g) and (h). *See* SSA Program Operations Manual System GN 03106.025, *available at*
 21 <https://secure.ssa.gov/apps10/poms.nsf/lnx/0203106025>.

22 As detailed in the attached declarations, beginning March 16, 2020, OAO’s staff members began
 23 to telework to protect employee health and prevent further spread of COVID-19. At that time, critical in-
 24 person physical tasks associated with preparing the administrative record could not be accomplished. For
 25 example, prior to the COVID-19 pandemic, to safeguard Personally Identifiable Information (PII), all
 26 hearing recordings, which are part of the administrative record, were downloaded onto compact discs and
 encrypted. OAO securely routed the encrypted discs to a private contractor through a daily pickup and

1 delivery service at the Official Duty Station (ODS) in Falls Church, Virginia. The private contractor
2 would transcribe the hearing recording and send the paper copy of the hearing transcript back to OAO.
3 OAO personnel would then scan the hearing transcript into the electronic record or place the hearing
4 transcript in the paper case file. Thereafter, OAO personnel would assemble the administrative record in
5 a prescribed order.

6 To ensure a continuity of operations, OAO has been actively pursuing mitigation efforts to allow
7 the remote preparation of administrative records. For cases in which the private contractors were already
8 in possession of hearing recordings for transcription, with the assistance of the Office of Acquisitions and
9 Grants (OAG), OAO received approval to receive these transcripts from the private contractors via
10 secured email, e.g., using password protection and redacted Social Security Numbers. In April 2020,
11 OAO began receiving such hearing transcripts from private contractors via secured email.

12 For cases in which OAO had not yet submitted recordings to the private contractors before March
13 16, 2020, OAO has been pursuing all available options to obtain transcriptions for these cases. In May
14 2020, OAO began encrypting hearing recordings and securely emailing them to the contractors for
15 transcription. Through the month of May, OAO and the contractors worked to resolve technical issues
16 that arose, particularly with large files. The process is functioning now, albeit at only half of normal
17 productivity.

18 Given the volume of pending cases, Defendant requests an extension in which to respond to the
19 Complaint until February 16, 2021. If in sixty days the CAR is not prepared, the Commissioner will file
20 a status report with the Court as to when he expects the CAR to be completed.

21 On December 10, 2020, the undersigned conferred with Plaintiff's counsel, who has no opposition
22 to the requested extension.

23 It is therefore respectfully requested that Defendant be granted an extension of time to file the CAR
24 and answer to Plaintiff's Complaint, through and including February 16, 2021.

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1 Dated: December 10, 2020

2 NICHOLAS A. TRUTANICH
3 United States Attorney

4 /s/ Allison J. Cheung
5 ALLISON J. CHEUNG
6 Special Assistant United States Attorney

7 ORDER

8 IT IS ORDERED that defendant's unopposed motion is GRANTED in part and DENIED in
9 part. The deadline for defendant to respond to plaintiff's complaint and file the CAR is
10 extended by 45 days, up to and including 2/1/2021. If defendant cannot meet this deadline,
11 the Court will consider another motion or stipulation.

12 **IT IS SO ORDERED**

13 **DATED:** 6:18 pm, December 15, 2020

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15 **BRENDA WEKSLER**
16 **UNITED STATES MAGISTRATE JUDGE**
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